

## **SUBCHAPTER G : CONSUMER-RELATED SOURCES**

### **CONSUMER PRODUCTS**

#### **§115.600. Definitions.**

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (Commission), the terms used by the Commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

**Aerosol product** - A pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force. This does not include pump sprays.

**Agricultural use** - The use of any pesticide or method or device for the control of pests in connection with the commercial production, storage, or processing of any animal or plant crop. This does not include the sale or use of pesticides in properly labeled packages or containers which are intended for home use, use in structural pest control, industrial use, or institutional use. The following are for the purposes of this subchapter only.

(A) Home use means use in a household or its immediate environment.

(B) Structural pest control means a use requiring a license under the Texas Structural Pest Control Act, Article 135B-6.

(C) Industrial use means use for or in a manufacturing, mining, or chemical process, or use in the operation of factories, processing plants, and similar sites.

(D) Institutional use means use within the confines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums, and office complexes.

**Air freshener** - Any consumer product including, but not limited to sprays, wicks, powders, and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting, or deodorizing the air. This does not include products that are used on the human body, products that function primarily as cleaning products, or disinfectant products claiming to deodorize by killing germs on surfaces. It does include spray disinfectants and other products that are expressly represented for use as air fresheners. To determine whether a product is an air freshener, all verbal and visual representations regarding product use on the label and packaging, and in the product's literature and advertising may be considered. The presence of and representations about a product's fragrance and ability to deodorize (resulting from surface application) shall not constitute a claim of air freshening.

**All other forms** - All consumer product forms for which no form-specific volatile organic compound (VOC) standard is specified in §115.612(a) of this title (relating to Control Requirements). Unless specified otherwise by the applicable VOC standard, this includes, but is not limited to, solids, liquids, wicks, powders, crystals, and cloth or paper wipes (towelettes).

**Antiperspirant** - Any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least 20% in at least 50% of a target population.

**ASTM** - The American Society for Testing and Materials.

**Automotive windshield washer fluid** - Any liquid designed for use in a motor vehicle windshield washer fluid system either as an anti-freeze or for the purpose of cleaning, washing, or wetting the windshield(s). This does not include any fluid which is placed in the washer fluid system of a motor vehicle prior to the time of initial sale.

**Bait station insecticide** - A container enclosing an insecticidal bait, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than 5.0% active ingredients.

**Bathroom and tile cleaner** - A product designed to clean tile or surfaces in bathrooms. This does not include products specifically designed to clean toilet bowls or toilet tanks.

**Carburetor-choke cleaner** - A product designed to remove dirt and other contaminants from a carburetor. This does not include products designed to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor.

**Charcoal lighter material** - Any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. This does not include any of the following:

- (A) electrical starters and probes,
- (B) metallic cylinders using paper tinder,
- (C) natural gas, and
- (D) propane.

**Construction and panel adhesive** - Any one-component household adhesive having gap filling capabilities, and which distributes stress throughout the bonded area resulting in a reduction or elimination of mechanical fasteners. These materials are applied from caulking cartridges.

**Consumer** - Any person who purchases or acquires any consumer product for personal, family, household, or institutional use. Persons acquiring a consumer product for resale are not considered consumers of that product.

**Consumer product** - Any substance, product, or article, held by any consumer, the use, consumption, storage, disposal, or destruction of which may result in the release of volatile organic compounds. This does not include fuels, fuel additives, motor vehicles, non-road vehicles, non-road engines, or architectural coatings.

**Contact adhesive** - Any household adhesive that:

- (A) is nitrile-based, or contains polychlorobutadiene (neoprene, chloroprene, bayprene), or latex; and
- (B) when applied to two substrates, forms an instantaneous, non-repositionable bond; and
- (C) when dried to touch, exhibits a minimum 30-minute bonding range; and
- (D) bonds only to itself without the need for reactivation by solvents or heat.

**Container/packaging** - The part or parts of the consumer or institutional product which serve only to contain, enclose, incorporate, deliver, dispense, wrap, or store the chemically formulated substance or mixture of substances which is solely responsible for accomplishing the purposes for which the product was designed or intended. This includes any article onto or into which the principal display panel is incorporated, etched, printed, or attached.

**Cooking spray aerosols** - Any aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food, or both.

**Crawling bug insecticide** - Any insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish, or spiders. This does not include products designed to be used exclusively on humans or animals.

**Deodorant** - Any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

**Disinfectant** - Any product intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 United States Code §136, et seq.). This does not include any of the following:

- (A) products designed solely for use on humans or animals,
- (B) products designed for agricultural use,
- (C) products designed solely for use in swimming pools, therapeutic tubs, or hot tubs,

and

(D) products which, as indicated on the principal display panel or label, are designed primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners, or metal polishes.

**Distributor** - Any person to whom a consumer product is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.

**Double-phase aerosol air freshener** - An aerosol air freshener with the liquid contents in two or more distinct phases that requires the product container be shaken before use to mix the phases, producing an emulsion.

**Dusting aid** - A product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone-based coating. This does not include products which consist entirely of compressed gases for use in electronic or other specialty areas.

**Engine degreaser** - A cleaning product designed to remove grease, grime, oil, and other contaminants from the external surfaces of engines and other mechanical parts.

**Executive Director** - The Executive Director of the Texas Natural Resource Conservation Commission, or his or her delegate.

**Fabric protectant** - A product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of water into the fabric's fibers. This does not include silicone-based products whose function is to provide water repellency, or products designed for use solely on fabrics which are labeled "for dry clean only" and sold in containers of ten fluid ounces or less.

**Flea and tick insecticide** - Any insecticide product that is designed for use against fleas, ticks, their larvae, or their eggs; not including products that are designed to be used exclusively on humans or animals and their bedding.

**Flexible flooring material** - Asphalt, cork, linoleum, no-wax, rubber, seamless vinyl, and vinyl composite flooring.

**Floor polish or wax** - A wax, polish, or any other product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. This does not include spray buff products, products designed solely for the purpose of cleaning floors,

floor finish strippers, products designed for unfinished wood floors, or coatings subject to architectural coatings regulations.

**Flying bug insecticide** - Any insecticide product that is designed for use against flying insects or other flying arthropods, including, but not limited to, flies, mosquitoes, moths, or gnats. This does not include wasp and hornet insecticide, or products that are designed to be used exclusively on humans or animals.

**Fragrance** - A substance or complex mixture of aroma chemicals, natural essential oils, and other functional components with a combined vapor pressure not in excess of 2 mm mercury at 20°C, which is added to a consumer product to impart an odor or scent or to counteract a malodor.

**Furniture maintenance product** - A wax, polish, conditioner, or any other product designed for the purpose of polishing, protecting, or enhancing finished wood surfaces other than floors. This does not include dusting aids, products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers, and lacquers.

**Gel** - A colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.

**General purpose adhesive** - Any non-aerosol household adhesive designed for use on a variety of substrates, not including contact adhesives or construction and panel adhesives.

**General purpose cleaner** - A product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. This includes products designed for general floor cleaning, kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces. This does not include non-water-based degreasers.

**Glass cleaner** - A cleaning product designed primarily for cleaning surfaces made of glass. This does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment, or photocopying machines.

**Hairspray** - A consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

**Hair mousse** - A hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

**Hair styling gel** - A high viscosity, often gelatinous, product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure.

**High volatility organic compound (HVOC)** - Any volatile organic compound that exerts a vapor pressure greater than 80 millimeters mercury when measured at 20°C.

**Household adhesive** - Any household product that is used to bond one surface to another by attachment. This does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate.

**Household product** - Any consumer product that is primarily designed to be used inside or outside of living quarters or residences that are occupied or intended for occupation by individuals, including the immediate surroundings.

**Initial sale** - The bargain, sale, transfer, or delivery with intent to pass an interest therein, other than a lien, of a motor vehicle which has not been previously registered or licensed in Texas or elsewhere; and such a bargain, sale, transfer, or delivery, accompanied by registration or licensing of

said vehicle in Texas or elsewhere, shall constitute the first sale of said vehicle, irrespective of where such bargain, sale, transfer, or delivery occurred.

**Insect repellent** - A pesticide product that is designed to be applied on human skin, hair, or attire worn on humans in order to prevent contact with or repel biting insects or arthropods.

**Insecticide** - A pesticide product that is designed for use against insects or other arthropods, but excluding products that are:

- (A) for agricultural use,
- (B) for use in maintaining building structures, or
- (C) restricted materials that require a permit for use and possession.

**Insecticide fogger** - Any insecticide product designed to release all or most of its content, as a fog or mist, into indoor areas during a single application.

**Institutional product** - A consumer product that is designed for use in the maintenance or operation of an establishment that manufactures, transports, or sells goods or commodities, or provides services for profit; or is engaged in the nonprofit promotion of a particular public, educational, or charitable cause. Establishments include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. Institutional products do not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

**Label** - Any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon any consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

**Laundry prewash** - A product that is designed for application to a fabric prior to laundering and that supplements or contributes to the effectiveness of laundry detergents and/or provides specialized performance.

**Laundry starch product** - A product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and may also act to help ease ironing of the fabric. This includes, but is not limited to, fabric finish, sizing, and starch.

**Lawn and garden insecticide** - An insecticide product designed primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods.

**Liquid** - A substance or mixture of substances which is capable of flow as determined under the American Society for Testing and Materials (ASTM) D-4359-90. This does not include powders or other materials that are composed entirely of solid particles.

**Manufacturer** - Any person who imports, manufactures, assembles, produces, packages, repackages, or relabels a consumer product for distribution or sale in Texas.

**Medium volatility organic compound (MVOC)** - Any volatile organic compound that exerts a vapor pressure greater than two millimeters mercury and less than or equal to 80 millimeters mercury when measured at 20°C.

**Nail polish** - Any clear or colored coating designed for application to the fingernails or toenails and including, but not limited to, lacquers, enamels, acrylics, base coats, and top coats.

**Nail polish remover** - A product designed to remove nail polish and coatings from fingernails or toenails.

**Non-aerosol product** - Any product that is not dispensed by a pressurized spray system.

**Nonresilient flooring** - Flooring of a mineral content which is not flexible, including but not limited to, terrazzo, marble, slate, granite, brick, stone, ceramic tile, and concrete.

**Oven cleaner** - Any product designed to clean or remove dried food deposits from oven walls.

**Percent-by-weight** - The total weight of volatile organic compound (VOC) except those VOCs exempted under §115.617 of this title (relating to Exemptions), expressed as a percentage of the total net weight of the product exclusive of the container or package as calculated according to the following equation:

$$\text{Percent-By-Weight} = \frac{(B - C)}{A} * 100$$

Where:

- A = net weight of unit (excluding container and packaging)
- B = weight of VOCs, per unit
- C = weight of VOCs exempted under §115.617, per unit

**Pesticide** - Includes any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating any pest, or any substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, provided that the term pesticide will not include anything which the U.S. Environmental Protection Agency does not consider to be a pesticide.

**Principal display panel or panels** - That part, or those parts of a label that are so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the principal display panel shall pertain to all such principal display panels.

**Product category** - The applicable category which best describes the product as listed in this section.

**Product form** - The applicable form which most accurately describes the product's dispensing form, including aerosol products, gels, liquids, pump sprays, and solids.

**Propellant** - A liquefied or compressed gas that is used in whole or in part, such as a co-solvent, to expel a liquid or any other material from the same self-pressurized container or from a separate container.

**Pump spray** - A packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger, or other actuator.

**Restricted materials** - Any pesticides established for restricted use under Section 3(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. §136, et seq.)

**Retailer** - Any person who sells, supplies, or offers consumer products for sale directly to consumers.

**Retail outlet** - Any establishment at which consumer products are sold, supplied, or offered for sale directly to consumers.

**Single-phase aerosol air freshener** - an aerosol air freshener with the liquid contents in a single homogeneous phase and which does not require that the product container be shaken before use.

**Shaving cream** - An aerosol product which dispenses a foam lather intended to be used with a blade or cartridge razor in the removal of facial or other bodily hair, or other wet-shaving system.

**Solid** - A substance or mixture of substances which, either whole or subdivided (such as the particles comprising a powder), is not capable of flow as determined under the American Society for Testing and Materials (ASTM) D-4359-90.

**Spray buff product** - A product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

**Subsequent sale** - The bargain, sale, transfer, or delivery, with intent to pass an interest therein, other than a lien, of a motor vehicle which has been registered or licensed outside of Texas, save and except when such vehicle is not required under law to be registered or licensed in Texas or elsewhere; and any such bargain, sale, transfer, or delivery of a motor vehicle after same has been registered or licensed shall constitute a subsequent sale, irrespective of where bargain, sale, transfer, or delivery occurred.

**Usage directions** - The text or graphics on the product's label or accompanying literature which describes to the end user how and in what quantity the product is to be used.

**Wasp and hornet insecticide** - Any insecticide product that is designed for use against wasps, hornets, yellow jackets, or bees by allowing the user to spray a high-volume directed stream or burst from a safe distance at the intended pest or its hiding place.

**Wax** - A material or synthetic thermoplastic substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics). Wax includes, but is not limited to, substances derived from the secretions of plants and animals such as carnauba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

**Wood floor wax** - Wax-based products for use solely on wood floors.

Adopted February 14, 1996

Effective March 7, 1996

#### **§115.610. Applicability.**

Except as provided in §115.617 of this title (relating to Exemptions), this subchapter shall apply to any person who sells, offers for sale, supplies, distributes, or manufactures consumer products for use in the State of Texas.

Adopted May 4, 1994

Effective May 27, 1994

#### **§115.612. Control Requirements.**

(a) Volatile Organic Compound (VOC) content limits are as follows:

(1) Except as provided in §§115.613, 115.614, and 115.617 of this title (relating to Alternate Control Requirements, Innovative Products, and Exemptions), no person shall sell, supply,

offer for sale, distribute, or manufacture for use in Texas any consumer product which was manufactured after January 1, 1995 (January 1, 1996 for Nail Polish Removers, and Glass Cleaners--All Other Forms) and contains VOC in excess of the limits specified in Table III.



TABLE III  
CONSUMER PRODUCT VOLATILE ORGANIC  
COMPOUNDS (VOC) LIMITATION

Product Category	Percent-by-weight VOC
Air Fresheners	
Single-Phase Aerosols	70
Double-Phase Aerosols	30
Liquids/Pump Sprays	18
Solids/Gels	3
Automotive Windshield Washer Fluids	23.5
Bathroom and Tile Cleaners	
Aerosols	7
All Other Forms	5
Carburetor-Choke	
Cleaners	75
Charcoal Lighter Material	See §115.612(f)
Cooking Spray Aerosols	18
Dusting Aids	
Aerosol	35
All Other Forms	7
Engine Degreasers	75
Fabric Protectants	75
Floor Polishes/Waxes	
Products for Flexible Flooring Materials	7
Products for Nonresilient Flooring	10

TABLE III  
CONSUMER PRODUCT VOLATILE ORGANIC  
COMPOUNDS (VOC) LIMITATION

Product Category	Percent-by-weight VOC
Wood Floor Wax	90
Furniture Maintenance Products	
Aerosols	25
General Purpose Cleaners	10
Glass Cleaners	
Aerosols	12
All other forms	6
Hairsprays	80
Hair Mousses	16
Hair Styling Gels	6
Household Adhesives	
Aerosol	75
Contact	80
Construction and Panel	40
General Purpose	10
Insecticides	
Crawling Bug	40
Flea and Tick	25
Flying Bug	35
Foggers	45
Lawn and Garden	20

TABLE III  
CONSUMER PRODUCT VOLATILE ORGANIC  
COMPOUNDS (VOC) LIMITATION

Product Category	Percent-by-weight VOC
Laundry Prewash	
Aerosols/Solids	22
All Other Forms	5
Laundry Starch Products	5
Nail Polish Removers	75
Oven Cleaners	
Aerosol Pump Sprays	8
Liquids	5
Shaving Creams	5

(2) Except as provided in §§115.613, 115.614, and 116.617 of this title, no person shall sell, supply, offer for sale, distribute, or manufacture for use in Texas any antiperspirant or deodorant which was manufactured after January 1, 1995 and contains high volatility organic compounds (HVOC) in excess of the limits specified in Table IV.

Table IV  
ANTIPERSPIRANT/DEODORANT VOC LIMITATION

Product Category	Percent-by-weight HVOC
Aerosol product	
Antiperspirant	60
Deodorant	20
Non-aerosol product	0

(b) For consumer products for which the usage directions specifically state that the product should be diluted prior to use, the limits specified in subsection (a) of this section shall apply to the product only after the minimum recommended dilution has taken place. For purposes of this subsection, the usage directions shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.

(c) The provisions of Tables III and IV shall not apply to a consumer product manufactured prior to the effective date stated in subsection (a) of this section.

(d) Notwithstanding the definition of product category in §115.600 of this title (relating to Definitions), if anywhere on the principal display panel of any consumer product, any representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC standard is specified in §115.612 of this title (relating to Control Requirements), then the lowest VOC standard shall apply. This requirement does not apply to general purpose cleaners or antiperspirants.

(e) For consumer products that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 United States Code, §136 et seq.), the effective date of the VOC standards is one year after the date specified in subsection (a).

(f) The requirements for charcoal lighter material are as follows.

(1) No person shall sell for use in Texas any charcoal lighter material which was manufactured after January 1, 1996 that emits greater than an average of 0.020 pounds of VOC per start when used in accordance with the directions on the label of the product. Emissions are determined using the procedures specified in the South Coast Air Quality Management District (SCAQMD) Rule 1174 Ignition Method Compliance Certification Protocol, dated February 27, 1991, or other methods which are approved by the Executive Director and are shown to provide equivalent results. Charcoal lighter materials certified by Executive Order of the California Air Resources Board (CARB) are adequate, but not necessary, to demonstrate compliance with the requirements of this subsection, unless the CARB certification is revoked.

(2) Charcoal lighter materials' labels and accompanying literature shall clearly show usage directions for the product. For liquid charcoal lighter materials, the directions shall accurately reflect the required quantity of charcoal lighter material per pound of charcoal that was used in the SCAQMD Rule 1174 Testing Protocol for that product.

(3) Records of emission testing results, physical property data, formulation data, and other information for use in determining compliance with the requirements of this subsection for all charcoal lighter materials must be made available to the Executive Director within 30 days of receipt of such requests.

(g) The requirements of paragraph (a)(1) of this section do not apply to automotive windshield washer fluids that are contained in motor vehicles at the time of initial sale, or at the time of subsequent sale of vehicles registered or licensed outside of Texas.

Adopted December 6, 1995

Effective December 28, 1995

**§115.613. Alternate Control Requirements.**

(a) For all persons affected by this undesignated head, any alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this section may be approved by the Executive Director in accordance with §115.910 through §115.916 of this title (relating to Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent or greater.

(b) The Executive Director may exempt a consumer product from the requirements of §115.612(a) of this title (relating to Control Requirements) if a manufacturer obtains a variance pursuant to appropriate California Air Resources Board (CARB) regulations, unless the CARB variance is revoked. The following procedures are applicable:

(1) A manufacturer shall apply in writing to the Executive Director for any alternate control requirements claimed under this subsection. The application shall include the supporting documentation that demonstrates that the product has been granted a variance pursuant to CARB regulations, and shall include documentation showing the terms and conditions of the CARB variance.

(2) Within 30 days of receipt of an alternate control requirements application, the Executive Director shall determine whether an application is complete.

(3) Within 90 days after an application has been deemed complete, the Executive Director shall determine whether, under what conditions, and to what extent, a deviation from the requirements of §115.612(a) of this title will be permitted. The Executive Director shall notify the applicant of the decision in writing, and shall specify the terms and conditions of the approved alternate control requirements.

(4) For any product for which alternate control requirements have been granted pursuant to this subsection, the manufacturer shall notify the Executive Director in writing within 30 days of any changes in the product formulation or terms and conditions of the corresponding CARB variance. The Executive Director shall determine what, if any, changes to the alternate control requirements are needed, and shall notify the manufacturer of the decision in writing.

(5) If volatile organic compounds (VOC) standards are lowered for a product category through any subsequent rulemaking in Texas, all alternate control requirements granted for products in the product category shall have no force and effect as of the effective date of the modified VOC standard.

(c) Any person who cannot comply with the requirements set forth in §115.612(a) of this title because of extraordinary reasons beyond the person's reasonable control may apply in writing to the Executive Director for alternate control requirements.

(1) The application shall set forth the following:

(A) The specific grounds on which the alternate control requirements order is sought;

(B) The requested terms and conditions; and

(C) The specific method(s) by which compliance with the requested terms and conditions will be achieved.

(2) The alternate control requirements request shall be processed in accordance with §103.11 of this title (relating to Types of Hearings). Information submitted to the Executive Director by an applicant may be claimed as confidential, and if so claimed, shall be protected from public disclosure to the extent allowed under the Texas Open Records Act.

(3) In considering whether to grant a deviation from this rule, the Executive Director shall consider the facts and circumstances bearing on the reasonableness of a product's emissions, including:

(A) the character and degree of injury to or interference with the public's health and physical property associated with product emissions when used for its intended purpose;

(B) the product's social and economic value;

(C) the technical practicability and economic reasonableness of reducing the emissions resulting from the product; and

(D) the total emissions arising from use of the product.

(4) Any alternate control requirements order shall specify terms and condition and a date by which final compliance with its terms and conditions will occur, and may contain a condition that specifies increments of progress to assure timely compliance.

(5) An alternate control requirements order shall cease to be effective upon failure of the party to whom the order was granted to comply with any substantive term or condition of the order.

(6) If VOC standards are lowered for a product category through any subsequent rulemaking, all alternate control requirements orders granted for products in the product category shall have no force and effect as of the effective date of the modified VOC standard.

(7) Upon the application of any person, the Executive Director may review, and for good cause, modify or revoke an alternate control requirements order after holding a public hearing in accordance with §103.31 of this title (relating to Calling the Hearing) and §103.33 of this title (relating to Action on Request for a Hearing.)

Adopted May 4, 1994

Effective May 27, 1994

**§115.614. Innovative Products.**

(a) A consumer product shall be exempt from the requirements of §115.612(a) of this title (relating to Control Requirements) if a manufacturer demonstrates to the satisfaction of the Executive Director that, due to some characteristic of the product formulation, design, delivery systems, or other factors, the use of the product will result in equal or less volatile organic compounds (VOC) emissions as compared to:

(1) The VOC emissions from a representative consumer product which complies with the VOC standards specified in §115.612(a) of this title, or

(2) The calculated VOC emissions from a noncomplying representative product, if the product had been reformulated to comply with the VOC standards specified in §115.612(a) of this title. VOC emissions shall be calculated using the following equation:

$$E_R = E_{NC} \times \frac{VOC_{STD}}{VOC_{NC}}$$

Where:

$E_R$	=	The VOC emissions from the noncomplying representative product, had it been reformulated.
$E_{NC}$	=	The VOC emissions from the noncomplying representative product in its current formation.
$VOC_{STD}$	=	The VOC standard specified in §115.612(a).
$VOC_{NC}$	=	The VOC content of the noncomplying product in its current formulation.

If a manufacturer demonstrates that this equation yields inaccurate results due to some characteristics of the product formulation or other factors, an alternative method which accurately calculates emissions may be used upon approval of the Executive Director.

(b) For the purposes of this section a representative consumer product is:

(1) one which is subject to the same VOC limit in §115.612(a) of this title as the innovative product,

(2) which is of the same product form, unless the innovative product uses a form which was nonexistent in the product category on the date of application in accordance with §115.614(c) of this title, and

(3) which has at least similar efficacy as other consumer products in the same category based on generally accepted tests for that category.

(c) A manufacturer shall comply with one of the following paragraphs for any exemption claimed under this section.

(1) A manufacturer may apply in writing to the Executive Director for a pre-market approval of an exemption as follows:

(A) The application shall include the supporting documentation that demonstrates the emissions from the innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage. In addition, the applicant must provide any information necessary to enable the Executive Director to establish enforceable conditions for granting the exception including the VOC content for the innovative product, and test methods for determining the VOC content. Information submitted to the Texas Natural Resource Conservation Commission (TNRCC or Commission) by an exemption applicant may be claimed as confidential, and if so claimed, shall be protected from public disclosure to the extent allowed under the Texas Open Records Act.

(B) Within 30 days of receipt of the exemption application the Executive Director shall determine whether an application is complete.

(C) Within 90 days after an application has been deemed complete, the Executive Director shall determine whether, under what conditions, and to what extent, an exemption from the requirements of §115.612(a) of this title will be permitted. The applicant and the Executive Director may mutually agree to a longer time period for reaching a decision, and additional supporting documentation may be submitted by the applicant before a decision has been reached. The Executive Director shall notify the applicant of the decision in writing and specify such terms and conditions that are necessary to ensure that emissions from the product will meet the emissions reductions specified in subsection (a) of this section, and that such emissions reductions can be enforced.

(D) If an applicant has been granted an exemption for an innovative product by another state or federal agency whose criteria for exemption meet or exceed those provided for in subsection (a) of this section, the applicant may submit such an exemption as part of the application under this section. In such a case, the Executive Director shall make its determination under subsection (e) of this section within 45 days after the application has been deemed complete.

(E) In granting an exemption for a product, the Executive Director shall establish conditions that are enforceable. These conditions may include the VOC content of the innovative product, dispensing rates, application rates, and any other parameters determined by the



Executive Director to be necessary. The Executive Director shall also specify the test methods for determining conformance to the conditions established. The test methods shall include criteria for reproducibility, accuracy, sampling, and laboratory procedures.

(F) All exemptions previously granted by the Executive Director in accordance with this section, as adopted effective May 27, 1994, are deemed to be approved under this paragraph.

(2) In lieu of applying for pre-market approval under paragraph (1) of this subsection, a manufacturer may register a claim for an exemption. A consumer product shall be exempt from the requirements of §115.612(a) of this title if:

(A) The product meets the requirements of subsections (a) and (b) of this section, and the manufacturer files a registration document in writing with the Executive Director, certifying that the emissions meet these requirements, and provides the information required in subparagraph (B) of this paragraph. Retail sales in Texas of the innovative product may commence five (5) working days after receipt of the registration document by the Executive Director. Affirmative approval of the registration by the TNRCC is not required.

(B) An innovative product registration must briefly set forth any claims which form the basis for the innovative nature of the product, such as product formulation, design, delivery system, usage directions, or other factors. Additional claims not set forth in the registration may not be used to establish the innovative nature of the product, however, a manufacturer may subsequently provide additional elaboration as to the details of registered claims as necessary to satisfy an evaluation. Prior to registration, a manufacturer must have sufficiently tested the product to clearly establish the product's VOC emissions and innovative nature.

(C) If noncompliance of a registered innovative product is reported to or otherwise suspected by the TNRCC, then the TNRCC may institute an evaluation of the manufacturer's registration claims to determine if the report of noncompliance has any merit. Under this evaluation, the manufacturer shall be required to provide basic information supporting or not supporting a product's innovative claims to the Executive Director. The Executive Director may also require additional review of supporting documentation, until the Executive Director is satisfied with the legitimacy of the innovative claims. Information submitted to the Executive Director pursuant to an evaluation may be claimed as confidential, and if so claimed, shall be protected from public disclosure to the extent allowed under the Texas Open Records Act. Additional testing, completed after the submittal of an innovative product registration, may not be used to further substantiate the manufacturer's claims.

(D) If, through an evaluation, the Executive Director determines that a registered innovative product is non-compliant with the innovative product provisions under subsection (a) of this section, then the manufacturer shall be required to purchase or provide VOC emission reduction credits in each nonattainment area equivalent to twice the excess emissions determined to have occurred in the respective nonattainment area due to sale of the non-compliant product. The manufacturer shall also be required to reformulate or withdraw the non-compliant product from the market in Texas. Civil penalties may also be assessed.

(E) Neither pre-market review nor subsequent evaluation shall create an enforcement waiver and the TNRCC may revisit innovative claims at any time the Executive Director has reason to believe that substantive circumstances have changed.

(F) The Executive Director will not consider, and the applicant may not rely upon, innovative product claims or other information submitted as confidential on a registration document.

(d) For any product for which an exemption has been granted or registration filed pursuant to this section, the manufacturer shall notify the Executive Director in writing no less than 30 days prior to any change in the product formulation, recommended product usage directions, or any information which would alter the emissions estimates submitted to the Executive Director in support of the exemption application or registration.

(e) If VOC standards are lowered for a product category through any subsequent rulemaking, all innovative product exemptions granted or registrations filed for products in the product category, except as provided in this subsection, shall have no force and effect as of the effective date of the modified VOC standard. This subsection shall not apply to innovative products which have VOC emissions less than representative products using the new VOC standard, for which a written notification of the product's emissions status versus the lowered VOC standard has been submitted to the Executive Director before the effective date of such standard, or to products manufactured prior to the effective date of the modified standard under a valid innovative product exemption or registration.

(f) If the Executive Director believes that a consumer product for which an exemption has been granted no longer meets the criteria for an innovative product specified in subsection (a) of this section, the Executive Director may modify or revoke the exemption as necessary to assure that the product will meet these criteria.

Adopted February 14, 1996

Effective March 7, 1996

#### **§115.615. Testing Requirements.**

(a) Testing to determine compliance with the requirements of this subchapter shall be performed using methods which are shown to accurately determine the concentration of volatile organic compounds (VOCs) in a subject product or its emissions.

(b) Testing to determine compliance with the requirements of this subchapter may alternatively be demonstrated through calculation of the VOC content from records of amounts of constituents used to manufacture the product. Compliance determination based on these records may not be used unless the manufacturer of a consumer product keeps accurate and updated records of production of the amount and chemical composition of the individual product constituents. These records must be kept for at least three years.

(c) Testing to determine whether a product is a liquid or solid shall be performed using American Society for Testing and Materials (ASTM) D4359-90 (May 25, 1990), which is incorporated by reference herein.

(d) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D86-90 (September 28, 1990), which is incorporated by reference herein.

(e) Testing to determine compliance with the requirements for charcoal lighter material shall be performed using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991), which is incorporated by reference herein, or other methods which are approved by the Executive Director and are shown to provide equivalent results.

Adopted May 4, 1994

Effective May 27, 1994

**§115.616. Recordkeeping and Reporting Requirements.**

(a) Each manufacturer of a consumer product subject to §115.612 of this title (relating to Control Requirements) shall clearly display on each container or package for any consumer product regulated under this subchapter, and manufactured after January 1, 1995, one of the following:

(1) the day, month, and year on which the product was manufactured;

(2) a code indicating such date; or

(3) a statement that the product was manufactured after a certain day, month, and year which is later than January 1, 1996.

(b) If a manufacturer uses a code indicating the date of manufacture for any consumer product subject to §115.612 of this title, an explanation of the code must be filed with the Executive Director no later than January 1, 1995.

(c) Records of product volatile organic compounds (VOC) content, based upon testing or chemical composition records as set forth in §115.615 of this title (relating to Testing Requirements), must be made available to the Executive Director within 30 days of receipt of such requests. Information submitted in response to such requests may be claimed as confidential, and if so claimed shall be protected from public disclosure to the extent allowed under the Texas Open Records Act.

(d) On or before January 1, 1995, each manufacturer subject to §115.612(a)(2) of this title shall submit to the Executive Director a written report. If a manufacturer introduces new products or makes formulation changes to existing products which alters information previously submitted pursuant to paragraphs (5), (6), or (7) of this subsection, the manufacturer shall also submit by January 1 every year thereafter another report, detailing such information. Information submitted pursuant to this subsection

may be claimed as confidential, and if so claimed shall be protected from public disclosure to the extent allowed under the Texas Open Records Act. Each report shall include the following information:

- (1) the brand name for each of the manufacturer's antiperspirant and deodorant products;
- (2) the owner of the trademark or brand name;
- (3) the product forms;
- (4) the annual sales in Texas in pounds per year and the method used to calculate annual sales;
- (5) the total VOC content in percent by weight which:
  - (A) has a vapor pressure of 2.0 millimeters mercury (mm Hg) or less at 20 degrees Centigrade, or
  - (B) consists of more than 10 carbon atoms, if the vapor pressure is unknown;
- (6) the total high volatility organic compounds content in percent by weight.
- (7) the total medium volatility organic compounds content in percent by weight.

Adopted July 24, 1996

Effective August 16, 1996

**§115.617. Exemptions.**

(a) This rule shall not apply to any consumer product manufactured in Texas for shipment and use outside of Texas.

(b) The provisions of this undesignated head shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale in Texas a consumer product that does not comply with the volatile organic compounds (VOC) standards specified in §115.612 of this title (relating to Control Requirements), as long as the manufacturer or distributor can demonstrate that the consumer product is intended for shipment and use outside of Texas, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed in Texas. This subsection does not apply to consumer products that are sold, supplied, or offered for sale by any person to retail outlets in Texas.

(c) The requirements of §115.612(a) of this title shall not apply to fragrances and colorants up to a combined level of 2.0% VOC by weight contained in any consumer product.

(d) The requirements of §115.612(a)(1) of this title shall not apply to any VOC that:

(1) contains more than 12 carbon atoms per molecule, and for which the vapor pressure is unknown,

(2) has a vapor pressure of 0.1 millimeter mercury (mm Hg) or less at 20°C, or

(3) has a melting point higher than 20°C and does not sublime (i.e., does not change directly from a solid into a gas without melting), if the vapor pressure is unknown.

(e) The requirements of §115.612(a)(2) of this title shall not apply to any VOC that:

(1) contains more than 10 carbon atoms per molecule, and for which the vapor pressure is unknown, or

(2) has a vapor pressure of 2 mm Hg or less at 20°C.

(f) The requirements of §115.616(b) of this title (relating to Recordkeeping Requirements) shall not apply to consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 United States Code, §136 et seq.)

(g) The requirements of §115.612(a) of this title shall not apply to air fresheners and insecticides containing at least 98% paradichlorobenzene.

(h) The requirements of §115.612(a) of this title shall not apply to adhesives sold in containers of one fluid ounce or less.

(i) The requirements of §115.612(a) of this title shall not apply to bait station insecticides.

(j) The requirements of §115.612(a) of this title shall not apply to air fresheners that are comprised entirely of fragrance, less compounds not defined as VOC under §115.10 of this title (relating to Definitions) or exempted under subsection (d) of this section.

Adopted February 14, 1996

Effective March 7, 1996

#### **§115.619. Counties and Compliance Schedules.**

All affected persons within the State of Texas shall be in compliance with the requirements of this undesignated head as soon as practicable, but in any case no later than the dates specified in §115.612 of this title (relating to Control Requirements), §115.613 of this title (relating to Alternate Control Requirements), §115.614 of this title (relating to Innovative Products), and §115.617 of this title (relating to Exemptions).

Adopted May 4, 1994

Effective May 27, 1994